

EXPLANATORY MEMORANDUM TO

THE TRANSFER OF FUNCTIONS (INFORMATION AND PUBLIC RECORDS) ORDER 2015

2015 No. 1897

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order transfers certain statutory functions relating to freedom of information from the Secretary of State to the Chancellor of the Duchy of Lancaster and provides for other of the Secretary of State's functions relating to freedom of information to be exercisable concurrently with the Chancellor of the Duchy of Lancaster. The Order also transfers certain statutory functions relating to public records from the Lord Chancellor to the Secretary of State (for Culture, Media and Sport). It also makes supplementary provision in connection with those transfers, and in connection with the transfer of responsibility for data protection from the Secretary of State for Justice to the Secretary of State for Culture, Media and Sport.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Order transfers some of the Secretary of State's functions under the Freedom of Information Act 2000 ("FOIA") to the Chancellor of the Duchy of Lancaster, and in relation to certain other functions, makes them exercisable concurrently by the Secretary of State and the Chancellor of the Duchy of Lancaster. The functions that are transferred to the Chancellor of the Duchy of Lancaster, or which are to be exercised concurrently by the Chancellor of the Duchy of Lancaster and the Secretary of State, include those functions under the FOIA which were made exercisable by the Secretary of State for Justice by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887).
- 4.2 The Order also transfers to the Secretary of State the Lord Chancellor's general functions in relation to management of public records. These public records functions are to be found in the Public Records Act 1958 ("the 1958 Act"), the FOIA, the Environmental Regulations 2004 (S.I. 2004/3391) and the Government of Wales Act 2006.

- 4.3 These transfers require an Order to be made under the Ministers of the Crown Act 1975 and cannot be implemented administratively. The Order is also required to make appropriate supplementary provision in relation to these transfers, and also in relation to the transfer of responsibility for data protection policy from the Secretary of State for Justice to the Secretary of State for Culture, Media and Sport.

5. Extent and Territorial Application

- 5.1 This instrument extends to all of the United Kingdom.
5.2 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Secretary of State for Justice has made the following statement regarding Human Rights:

“In my view the provisions of the Transfer of Functions (Information and Public Records) Order 2015 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 On 17th July 2015 the Parliamentary Secretary for the Cabinet Office announced, through a Written Ministerial Statement (HLWS134), the Prime Minister’s confirmation that responsibility for freedom of information policy had transferred from the Ministry of Justice to the Cabinet Office with effect from 17th July 2015. This announcement was also made to the House of Commons by Written Ministerial Statement (HCWS153) on 20th July. On 17th September 2015, the Prime Minister announced through a Written Ministerial Statement (HCWS209) that from that date responsibility for The National Archives, data protection policy, and the Information Commissioner’s Office would be transferred from the Ministry of Justice to the Department for Culture, Media and Sport, while responsibility for government record management policy would be transferred from the Ministry of Justice to the Cabinet Office. This Order gives effect to those transfers of the relevant statutory functions, which cannot be achieved administratively.
- 7.2 Whilst most of the Secretary of State’s functions under the FOIA are transferred to the Chancellor of the Duchy of Lancaster, certain functions under the FOIA are made exercisable concurrently by the Secretary of State and the Chancellor of the Duchy of Lancaster. These are functions in relation to which it is desirable that Ministers in departments other than the Cabinet Office are able to exercise themselves. For example, it is preferable that Ministers in departments other than the Cabinet Office should be able to exercise the order making power under section 5(1) of the FOIA to designate a body as a public authority subject to the FOIA, where the body in question falls within that department’s remit, without relying on the Chancellor of the Duchy of Lancaster to make the Order.
- 7.3 The Order also makes provision for most of the functions exercisable by the Lord Chancellor under the 1958 Act, and his functions under the Environmental Information Regulation 2004, and Government of Wales Act 2006 to be transferred to the Secretary of State for Culture, Media and Sport. All the functions to be transferred relate to the information and public record responsibilities hitherto held by the Lord Chancellor on account of his oversight of the public records system, but which from

17th September 2015 have been transferred to the Secretary of State for Culture, Media and Sport. The Lord Chancellor will retain his functions in section 8 of the 1958 Act in respect of court records which are not in The National Archives or another appointed place of deposit.

- 7.4 The Lord Chancellor's function of issuing a Code of Practice on record management under section 46 FOIA is being transferred to the Secretary of State for Culture, Media and Sport, who must consult (amongst other persons) the Chancellor for the Duchy of Lancaster. This is because the Code of Practice applies to all public authorities and other public records bodies, and not just to central government for whose records management the Cabinet Office now has policy responsibility.

Consolidation

- 7.5 While this Order amends a number of enactments in consequence of the transfer of functions, it does not in itself create a need for consolidation.

8. Consultation outcome

- 8.1 There is no requirement to consult on this Order, which gives effect to a machinery of Government change already announced by the Prime Minister, and there has not been any formal consultation on the Order itself.

9. Guidance

- 9.1 No guidance is being produced in connection with this Order.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector beyond the transfers of functions provided for in the Order.
- 10.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 There are no plans to monitor or review this Order.

13. Contact

- 13.1 Oliver Lendrum at the Cabinet Office: Telephone: 020 7271 8920 or email: oliver.lendrum@cabinetoffice.gov.uk can answer any queries regarding the instrument.